

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 763

Introduced by Mello, 5; Coash, 27; Cornett, 45; Flood, 19;
Lautenbaugh, 18; McGill, 26; Rogert, 16.

Read first time January 06, 2010

Committee: Judiciary

A BILL

- 1 FOR AN ACT relating to asbestos-related liabilities; to adopt the
- 2 Successor Asbestos-Related Liability Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 7 of this act shall be known and
2 may be cited as the Successor Asbestos-Related Liability Act.

3 Sec. 2. For purposes of the Successor Asbestos-Related
4 Liability Act:

5 (1) Asbestos claim means any claim, wherever or whenever
6 made, for damages, losses, indemnification, contribution, or other
7 relief arising out of, based on, or in any way related to asbestos,
8 including:

9 (a) Any claim involving the health effects of exposure to
10 asbestos, including a claim for personal injury or death, mental or
11 emotional injury, risk of disease or other injury, or the costs of
12 medical monitoring or surveillance;

13 (b) Any claim made by or on behalf of any person exposed
14 to asbestos, or a representative, spouse, parent, child, or other
15 relative of the person; and

16 (c) Any claim for damage or loss caused by the
17 installation, presence, or removal of asbestos;

18 (2) Corporation means a corporation for profit, including
19 a domestic corporation organized under the laws of this state or
20 a foreign corporation organized under laws other than the laws of
21 this state;

22 (3) Successor corporation means a corporation that
23 assumes or incurs or has assumed or incurred successor
24 asbestos-related liabilities that is a successor and became a
25 successor before January 1, 1972, or is any of that successor

1 corporation's successors;

2 (4) Successor asbestos-related liabilities means
3 liabilities, whether known or unknown, asserted or unasserted,
4 absolute or contingent, accrued or unaccrued, liquidated or
5 unliquidated, or due or to become due, that are related to asbestos
6 claims and were assumed or incurred by a corporation as a result
7 of or in connection with a merger or consolidation, or the plan
8 of merger or consolidation related to the merger or consolidation
9 with or into another corporation, or that are related in any way to
10 asbestos claims based on the exercise of control or the ownership
11 of stock of the corporation before the merger or consolidation.

12 Successor asbestos-related liabilities includes liabilities that,
13 after the time of the merger or consolidation for which the fair
14 market value of total gross assets is determined under section 5 of
15 this act, were or are paid or otherwise discharged, or committed
16 to be paid or otherwise discharged, by or on behalf of the
17 corporation, or by a successor corporation, or by or on behalf of
18 a transferor, in connection with settlements, judgments, or other
19 discharges in this state or another jurisdiction; and

20 (5) Transferor means a corporation from which successor
21 asbestos-related liabilities are or were assumed or incurred.

22 Sec. 3. (1) The limitations in section 4 of this act
23 shall apply to any successor corporation.

24 (2) The limitations in section 4 of this act shall not
25 apply to:

1 (a) Workers' compensation benefits paid by or on behalf
2 of an employer to an employee under the Nebraska Workers'
3 Compensation Act or a comparable workers' compensation law of
4 another jurisdiction;

5 (b) Any claim against a successor corporation that does
6 not constitute a successor asbestos-related liability;

7 (c) Any obligation under the National Labor Relations
8 Act, 29 U.S.C. 151, et seq., as amended, or under any collective
9 bargaining agreement; or

10 (d) A successor corporation that, after a merger or
11 consolidation, continued in the business of mining asbestos or in
12 the business of selling or distributing asbestos fibers or in the
13 business of manufacturing, distributing, removing, or installing
14 asbestos-containing products which were the same or substantially
15 the same as those products previously manufactured, distributed,
16 removed, or installed by the transferor.

17 Sec. 4. (1) Except as further limited in subsection
18 (2) of this section, the cumulative successor asbestos-related
19 liabilities of a successor corporation are limited to the
20 fair market value of the total gross assets of the transferor
21 determined as of the time of the merger or consolidation. The
22 successor corporation does not have responsibility for successor
23 asbestos-related liabilities in excess of this limitation.

24 (2) If the transferor had assumed or incurred successor
25 asbestos-related liabilities in connection with a prior merger

1 or consolidation with a prior transferor, then the fair market
2 value of the total gross assets of the prior transferor determined
3 as of the time of the earlier merger or consolidation shall be
4 substituted for the limitation in subsection (1) of this section
5 for purposes of determining the limitation of liability of a
6 successor corporation.

7 Sec. 5. (1) A successor corporation may establish the
8 fair market value of total gross assets for the purpose of
9 the limitations under section 4 of this act through any method
10 reasonable under the circumstances, including:

11 (a) By reference to the going concern value of the assets
12 or to the purchase price attributable to or paid for the assets in
13 an arms-length transaction; or

14 (b) In the absence of other readily available information
15 from which the fair market value can be determined, by reference to
16 the value of the assets recorded on a balance sheet.

17 (2) Total gross assets include intangible assets.

18 (3) To the extent total gross assets include any
19 liability insurance that was issued to the transferor whose assets
20 are being valued for purposes of this section, the applicability,
21 terms, conditions, and limits of such insurance shall not be
22 affected by this section, nor shall this section otherwise affect
23 the rights and obligations of an insurer, transferor, or successor
24 corporation under any insurance contract or any related agreements,
25 including, without limitation, preenactment settlements resolving

1 coverage-related disputes and the rights of an insurer to seek
2 payment for applicable deductibles, retrospective premiums, or
3 self-insured retentions or to seek contribution from a successor
4 corporation for uninsured or self-insured periods or periods
5 when insurance is uncollectible or otherwise unavailable. Without
6 limiting the foregoing, to the extent total gross assets include
7 such liability insurance, a settlement of a dispute concerning any
8 such liability insurance coverage entered into by a transferor or
9 successor corporation with the insurers of the transferor before
10 the effective date of this act shall be determinative of the
11 total coverage of such liability insurance to be included in the
12 calculation of the transferor's total gross assets.

13 Sec. 6. (1) Except as provided in subsections (2) through
14 (4) of this section, the fair market value of total gross assets at
15 the time of the merger or consolidation shall increase annually at
16 a rate equal to the sum of:

17 (a) The prime rate as listed in the first edition of
18 the Wall Street Journal published for each calendar year since the
19 merger or consolidation, unless the prime rate is not published
20 in that edition of the Wall Street Journal, in which case any
21 reasonable determination of the prime rate on the first day of the
22 year may be used; and

23 (b) One percent.

24 (2) The rate found in subsection (1) of this section
25 shall not be compounded.

1 (3) The adjustment of the fair market value of total
2 gross assets shall continue as provided in subsection (1) of this
3 section until the date the adjusted value is first exceeded by
4 the cumulative amounts of successor asbestos-related liabilities
5 paid or committed to be paid by or on behalf of the successor
6 corporation or a predecessor or by or on behalf of a transferor
7 after the time of the merger or consolidation for which the fair
8 market value of total gross assets is being determined.

9 (4) No adjustment of the fair market value of total gross
10 assets shall be applied to any liability insurance that is included
11 in total gross assets under subsection (3) of section 5 of this
12 act.

13 Sec. 7. (1) The courts of this state shall construe
14 the provisions of the Successor Asbestos-Related Liability Act
15 liberally with regard to successor corporations.

16 (2) The act shall apply to all asbestos claims filed
17 against a successor corporation on or after the effective date of
18 this act. The act also shall apply to any pending asbestos claims
19 against a successor corporation in which trial has not commenced
20 as of the effective date of this act, except that any provisions
21 of the act which would be unconstitutional if applied retroactively
22 shall be applied prospectively only.